

C O N F I D E N T I A L SECTION 01 OF 03 ABUJA 000959

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SUBJECT: NIGERIA: READOUT ON SOKOTO APPEALS COURT HEARING

CLASSIFIED BY AMBASSADOR HOWARD F. JETER. REASON 1.5 (D).

¶1. (C) Summary: Media reports indicate that the Sokoto Sharia appeals court on March 25 reversed a lower court stoning sentence, clearing Safiya Husseini of all charges in the case. During a March 22 conversation with PolCouns, Hauwa Ibrahim, one of Husseini's attorneys, stated that the Sokoto appellate court had listened intently to several defense arguments, particularly the theory that the trial verdict was improper because it was retroactive. Although the weight of law favored Safiya, there was significant political pressure on the judges to affirm the verdict. It remains to be seen whether Sokoto State will let the matter rest or will appeal in federal court. End Summary.

A FAIR HEARING

¶2. (SBU) During a March 22 meeting with PolCouns, Ibrahim encapsulated the Sokoto Sharia Appeals Court proceedings in the Safiya Husseini stoning case. During the hearings, the defense team presented arguments along three lines: (a) Constitutional Law, (b) Islamic Procedural Law; and (c) Islamic Substantive Law.

¶3. (SBU) The constitutional points argued most strenuously were that the sentence was retroactive and that Safiya was not adequately informed of the charges against her. Section 36 (8) of the 1999 Constitution protects a person from subsequently being criminally liable for an act that was not a crime when committed. The same section also provides that a criminal penalty cannot be harsher than the penalty in force at the time the act was committed. In Safiya's case, the alleged adultery occurred before criminal Sharia was established in Sokoto. Thus, the Sharia code is inapplicable, according to the defense's position. Instead of applying Sharia proscriptions, the court must look to Sokoto Criminal and Penal Codes then extant to determine whether a crime occurred and, if so, the applicable punishment. Ibrahim remarked that the judges spent more time on this argument than any other during the hearings.

¶4. (SBU) The other constitutional ground vigorously argued is Section 36 (6), which provides a defendant must be apprised in a language he understands about criminal charges against him. Ibrahim explained the sentencing court did not thoroughly explain the nature of the offense and punishment to Husseini. During his questioning of Husseini, the trial judge also used Arabic words such as "zina" when describing the crime of adultery. Safiya is an uneducated rural woman who knows no Arabic and thus did not understand the legal implications of "zina" and other words, Ibrahim asserted.

¶5. (C) Comment: The bench's focus on these arguments proved to be a positive indication of how the judges were leaning. By accepting these legal theories, the court could manage to save Safiya yet sidestep the more nettlesome legal issues, particularly the constitutional prohibition against cruel and unusual punishment. The argument that the sentence constitutes cruel and unusual punishment was part of the defense's formal brief; however, a tactical decision was taken not to make it the cornerstone of their presentation to this particular court. The lawyers felt the argument would engender little support and might produce animosity in a Sharia court. End comment.

¶6. (C) Regarding Islamic procedural law, the trial erred by not providing Safiya time to prepare nor was she given a real opportunity to have counsel or examine witnesses, the defense contended. Regarding Islamic substantive law, the purported confession was not valid, Ibrahim asserted. The "confession" was not a statement freely made by Safiya, but the melding of answers to a battery of confusing, leading questions asked by the trial judge. Also, the trial court did not allow Safiya

the opportunity to withdraw her "confession," a right provided under Sharia law. Ibrahim recalled that the lower court transcript showed that the man Husseini said had intercourse with her also admitted to intercourse but was later absolved when he began obfuscating his replies to the judge's questions. Ibrahim maintained that the court erred, under Maliki jurisprudence, in considering pregnancy conclusive proof of adultery. (Maliki is the prevailing school of Islamic thought in Nigeria.) Under the Maliki "hidden embryo" doctrine, a women can become pregnant five years after a divorce yet the pregnancy still can be attributed to the marriage, thus removing the stigma of adultery. During the hearings, the defense team asserted a finding of adultery required four independent witnesses who viewed the same alleged act at the same time.

¶7. (C) Last, the defense argued that stoning was not mandated by the Koran. Ibrahim said the court also focused heavily on this aspect of the case, questioning both sides whether stoning for adultery was based on the Koran and thus mandatory, or Maliki hadith (traditions and custom) or fiqh. If either of the latter two apply, the court could more easily exercise its discretion to reverse the trial decision, she claimed.

¶8. (C) Despite the judicial attention paid to key defense arguments and the impartiality displayed during the hearing, Ibrahim was unsure at the time of the conversation whether the panel had been sufficiently swayed. She cited local social and political pressure on the judges as the main reason for her uncertainty. A Sokoto-based colleague recounted to her a conversation with one of the judges who complained about being drawn into a swell of controversy by the case. Stressing that Sharia was very popular in Sokoto, she mentioned that comments from the gallery were overwhelmingly for the sentence and not very complimentary toward her and the other defense attorney's status who were called impious Muslims. (Comment: Faced with the prospect of social opprobrium and the potential of threats to their personal safety, the judges could have easily ignored the legal merits of the defense arguments and opted for the easy way out. Apparently, the judges stuck to their consciences and ignored the political flak swirling around them. Quite possibly, they might have received signals from key political figures in Sokoto and beyond that this case had gone too far in attracting the wrong type of publicity and that they should take any avenue allowing them to reverse the sentence without undermining Sharia. End comment.)

¶9. (C) Because they did not understand Sharia in its totality, particularly those aspects dealing with social and economic justice, outsiders seriously erred and underestimated Sharia's popularity with the average Northerner. Sharia is more than imposing harsh criminal punishments, maintained Ibrahim. In fact, the central theme underlying all the defense's arguments was that the stoning sentence would not have occurred if Sharia's tenets had been observed properly. Under Sharia, a stoning sentence was exceedingly rare. She hoped that outside commentary would be kept to a minimum so that Nigeria's Muslims could "clean their own house." However, critical statements from foreigners and even non-Muslim Nigerians only inflamed and blurred the issue, forcing people to choose between the extremes of either being against Sharia or unquestioningly supporting a political phenomenon its adherents had labelled as Sharia. For Nigerian Muslims, this was a Hobson's choice. Wanting to be viewed as faithful, most people would choose this politicized variant of Sharia, no matter how skewed it might be.

Courtroom Theatrics Even In Sokoto

¶10. (C) To comply with tradition in Sharia courts, the defense team selected a Sokoto-based male attorney who was versed in Arabic to act as lead counsel at trial although not the most senior member of the defense team. Despite this and other defense attempts to maintain proper decorum, the hearing on March 18 took on a carnival air. When Safiya entered the court, she was greeted like a "rock star." First, the gallery fell silent. Then there was a rush, as people pushed to take photographs with her. Even the prosecuting attorneys joined the queue. At one point, an imposter claiming to be Safiya's attorney approached Ibrahim soliciting funds for her purported client. When Safiya walked over and acknowledged Ibrahim, the huckster quickly disappeared into the throng.

¶11. (C) While the reversal brings a sigh of relief, there are three similar stoning cases in Sokoto and another in Katsina State. Unfortunately, some of the procedural errors that helped win Safiya's reversal may not be present in the other situations. Hard-line Sharia advocates who see the Safiya reversal as a blow against Sharia will try to make sure the sentences in the next cases are procedurally correct and more immune from appellate reversal. Non-Muslims who see the reversal as a mortal blow to criminal Sharia will be mistaken. As Ibrahim stated, Sharia is popular with many Nigerian Muslims. It is a social and political force that cannot be disbanded by one adverse ruling in one state. Even those politicians who exploited Sharia to bolster their popularity cannot control it now. Sharia is Northern Nigerian populism, much to the chagrin of the region's political elite who are accustomed to tight control of their area.

¶12. (C) As these other cases proceed, we will be faced with the same human rights considerations regarding the imposition of cruel and unusual punishment. However, we must be careful that our interests are not misconstrued as attacks against Sharia or Islam. Care should be taken to distinguish between legitimate Sharia and the unfortunate verdicts sometimes rendered by overzealous and untrained trial court judges. We must maintain our stance in protection of human rights but avoid sweeping statements about Sharia. As the reversal proves, while virtually all Muslims embrace Sharia, there are vastly different views within Nigeria's Moslem community about Sharia's procedural and substantive safeguards when it comes to the criminally accused. By making sure our statements and actions are well calibrated to promote human rights but not to make Sharia seem valueless, we will help people like Ibrahim and other moderates whose embrace of Sharia also encompasses protection of fundamental human rights.

Jeter